

k542CasS kjc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 863 (VSB)

5 WILLIAM FELIZ CASILLAS,

6 Defendant.

7 -----x

Teleconference
Sentencing

8 May 4, 2020
9 10:40 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13
14
15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
Southern District of New York

18 BY: MICAH F. FERGENSON

Assistant United States Attorney

19
20 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

21 BY: MARNE L. LENOX

22
23 ALSO PRESENT:

24 HUMBERTO GARCIA, Spanish Interpreter

25
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

k542CasS kjc

1 THE COURT: This matter is on for sentencing.

2 Mr. Casillas, can you hear me and can you understand
3 the interpreter?

4 THE DEFENDANT: Yes, of course.

5 THE COURT: Okay. I have asked the parties to please
6 identify themselves for the record, and when you do speak, I'm
7 not sure who all we have on the line -- I know Ms. Lenox is on
8 the line -- I just ask you to identify yourself by name so that
9 we could make sure that there is an accurate record of the
10 sentencing. All right.

11 For the government?

12 MR. FERGENSON: Good morning, your Honor. This is
13 Micah Fergenson for the government.

14 THE COURT: Okay, Mr. Fergenson.

15 For the defense?

16 MS. LENOX: Good morning, your Honor. For
17 Mr. Casillas, Marne Lenox.

18 THE COURT: Okay. Good morning.

19 Now, Mr. Casillas, if at any point in time during
20 these proceedings you don't understand something I am saying,
21 please let me know. We will stop the proceedings, and I will
22 try and answer your question or I will give you time to speak
23 to Ms. Lenox. Okay?

24 THE DEFENDANT: Okay. Thank you very much.

25 THE COURT: Okay.

k542CasS kjc

1 As an initial matter, I would like to confirm that you
2 wish to proceed with your sentencing over the telephone and
3 that you waive your right to be physically present in court
4 with your attorney for your sentencing.

5 THE DEFENDANT: Yes, sir, yes.

6 THE COURT: Do you understand that you have the right
7 to appear before me in person at the time of your sentence and
8 to speak directly to me in my courtroom -- in the courtroom
9 that you would be sentenced.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir. Yes, yes.

12 THE COURT: Okay. Are you also aware, however, that
13 because of the public health emergency created by the COVID-19
14 pandemic, the fact that that pandemic has interfered with
15 travel and restricted access to the federal courthouse?

16 THE DEFENDANT: Yes, your Honor, yes.

17 THE COURT: Am I correct that you do not want to wait
18 to be sentenced until the end of this public health emergency?

19 THE DEFENDANT: Yes, of course, because we don't know
20 how long this is going to take and I would have to be here
21 during the whole time.

22 THE COURT: That's correct. Okay.

23 So have you discussed these issues with your attorney,
24 Ms. Lenox?

25 THE DEFENDANT: Yes, of course.

k542CasS kjc

1 THE COURT: And are you willing to give up your right
2 to be present at the time of your sentence, physically present
3 at the time that your sentence is imposed in a courtroom with
4 your attorney standing next to you? Are you willing to give up
5 that right?

6 THE DEFENDANT: Yes. This is due to the emergency
7 that we are experiencing.

8 THE COURT: Correct, the health emergency that we are
9 experiencing.

10 Let me ask Ms. Lenox, I know that we have a copy of
11 the waiver form. Do you know whether Mr. Casillas was able to
12 sign it or will you be signing on his behalf?

13 MS. LENOX: No, your Honor, I signed it on his behalf.

14 THE COURT: Mr. Casillas, there is a form -- I'm
15 sorry. Ms. Lenox, have you gone over the form with
16 Mr. Casillas?

17 MS. LENOX: Yes, your Honor. Before the sentencing
18 last week, I went over the form with Mr. Casillas. I had our
19 Spanish interpreter read that form to him in Spanish, and he
20 consented over the phone with myself and Todd Burrell, our
21 interpreter.

22 THE COURT: Mr. Casillas, do you consent to having
23 your attorney sign on your behalf the form indicating that you
24 waive your right to be physically present for your sentencing?

25 THE DEFENDANT: Yes, sir. She already read that to me

k542CasS kjc

1 with an interpreter.

2 THE COURT: Okay. Do you also waive your right to
3 have your attorney, Ms. Lenox, the right to have her appear in
4 front of me physically to make arguments on your behalf?

5 THE DEFENDANT: Yes, sir, yes.

6 THE COURT: Okay. If at any point in time during
7 these proceedings, as I mentioned earlier, something arises and
8 you wish to speak with Ms. Lenox by yourself, in other words,
9 with no one else on the line other than the interpreter, please
10 let me know. Okay?

11 THE DEFENDANT: Okay. Okay, sir.

12 THE COURT: My understanding is that the probation
13 department does not object to the waiver of the presentence
14 interview and report. Is that consistent with the parties'
15 understanding?

16 The government?

17 MR. FERGENSON: This is Micah Fergenson.

18 Yes, your Honor, that's my understanding.

19 THE COURT: Ms. Lenox.

20 MS. LENOX: Yes, your Honor.

21 THE COURT: Ms. Lenox, have you discussed the waiver
22 of the preparation of the presentence report and the waiver of
23 the presentence interview with Mr. Casillas?

24 MS. LENOX: Yes, at length.

25 THE COURT: Okay.

k542CasS kjc

1 Mr. Casillas, have you discussed the issue of your
2 waiving your right to be interviewed by the probation
3 department?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you also discussed your waiver of
6 your right to have a presentence report prepared in connection
7 with your sentencing?

8 THE DEFENDANT: Yes. Yes, sir.

9 THE COURT: And do you waive the preparation of your
10 presentence report?

11 THE DEFENDANT: Yes, yes. She explained to me that it
12 wasn't necessary because of the problems that we are facing
13 and, therefore, we decided to proceed this way.

14 THE COURT: Okay. That is correct.

15 Well, in order for your sentencing to be expedited, in
16 order for it to be held today, as opposed to the date in June
17 when it was initially scheduled, it would have been -- there
18 wasn't sufficient amount of time for the probation department
19 to actually conduct the interview. That's my understanding for
20 why your attorney initially made the request to proceed without
21 a presentence report.

22 Do you agree with that?

23 THE DEFENDANT: Yes, yes. She explained that to me.

24 THE COURT: Okay. And as part of the presentence
25 investigation, you would have been interviewed, and the

k542CasS kjc

1 probation department would have asked you questions. Do you
2 also waive your right to be interviewed by the probation
3 department?

4 THE DEFENDANT: Yes. This is because of the emergency
5 that we are facing. If things were normal, I would have no
6 problem doing that.

7 THE COURT: Okay. All right. Thank you.

8 So I find that Mr. Casillas has knowingly and
9 voluntarily waived his right to have the presentence report
10 prepared by the probation department, which would have included
11 the presentence interview.

12 I also find that in connection with Mr. Casillas
13 appearing for sentencing that the ability to hold sentencing
14 utilizing videoconference, if made, would have been difficult.

15 Number one, my understanding is that there are very
16 few opportunities to utilize the videoconferencing technology
17 in connection with criminal proceedings.

18 Number two, my understanding is that even when the
19 videoconferencing is scheduled to be used, it has more often
20 failed to work than actually worked.

21 So I find that proceeding with this telephonic
22 sentencing is appropriate under the circumstances.

23 I also note that Chief Judge McMahon has found that,
24 because of the global health crisis and its impact on New York
25 in particular, the courthouse, 40 Foley, where my courtroom is

k542CasS kjc

1 located, is completely closed, and 500 Pearl Street has
2 extremely limited access, and therefore holding these
3 proceedings over the phone is appropriate on that basis also.

4 Let me just look to see if there are any other issues.

5 Mr. Fergenson, are there any other issues or findings
6 that I should make in connection with today's sentencing?

7 MR. FERGENSON: Thank you, your Honor. This is Micah
8 Fergenson.

9 Maybe two points. Again, I apologize if I just missed
10 them.

11 The first would be that the defendant's consent to
12 proceed by telephone was made knowingly and voluntarily after
13 consultation with counsel.

14 And then the second would be, you know, stating some
15 reasons why the sentencing can't be delayed without seriously
16 harming the interests of justice.

17 THE COURT: Okay.

18 First, with regard to the proceeding over the
19 telephone, I do find, based upon Mr. Casillas's statements and
20 his attorney's statements, Ms. Lenox's statements to me, that
21 Mr. Casillas's consent to proceed by telephone has been made
22 knowingly and voluntarily. In fact, in this case my
23 understanding is that it was the preference of the defense to
24 proceed expeditiously, and the only way to proceed, therefore,
25 would be to have (a) the waiver of the presentence report and

k542CasS kjc

1 interview and (b) the proceeding by telephone since proceeding
2 in person is impossible at this time.

3 In addition, I find that delaying the sentence would
4 adversely impact the public interest as well as Mr. Casillas's
5 interest in proceeding expeditiously with this sentencing and
6 it's in the public interest that the sentencing proceed at this
7 juncture.

8 Was there anything else, Mr. Fergenson?

9 MR. FERGENSON: No, your Honor. Thank you.

10 THE COURT: Okay.

11 Ms. Lenox, anything else I should ask or --

12 MS. LENOX: No, thank you, your Honor.

13 THE COURT: -- go over?

14 Okay. So as an initial matter I'm going to review the
15 materials I have received in connection with today's
16 sentencing.

17 I have received the defendant's sentencing submission
18 dated May 2, which includes a letter from Mr. Casillas; a
19 letter from the defendant's, Mr. Casillas's sister and two of
20 his brothers.

21 I have also received medical records from the Bureau
22 of Prisons as well as an affidavit or declaration from
23 Dr. Giftos, as well as two BOP screening forms. I have also
24 received the government's sentencing letter dated May 3, which
25 contained two exhibits, a photo, and a voucher.

k542CasS kjc

1 Have the parties received each of these submissions?

2 Mr. Fergenson?

3 MR. FERGENSON: Yes, your Honor.

4 THE COURT: Ms. Lenox?

5 MS. LENOX: Yes, your Honor.

6 THE COURT: And have these submissions either been
7 filed in redacted form or been filed on the docket?

8 Mr. Fergenson?

9 MR. FERGENSON: Yes, your Honor.

10 THE COURT: All right. Ms. Lenox.

11 MS. LENOX: Yes, your Honor.

12 THE COURT: With the understanding that because some
13 of the materials, the medical records in particular, may either
14 have been redacted in some form or another because they
15 contained personal identifying information and/or certain
16 health information.

17 Now, are there any other submissions or documents that
18 have been submitted by either party that the parties would like
19 me to consider that I have not mentioned?

20 From the government?

21 MR. FERGENSON: No, your Honor.

22 THE COURT: From the defense?

23 MS. LENOX: No, your Honor.

24 THE COURT: As I have already found, there is no
25 presentence report that's been prepared in this case, so we are

k542CasS kjc

1 prepared to proceed with sentencing.

2 Mr. Casillas, before we proceed, do you have any
3 questions for me or for your attorney?

4 THE DEFENDANT: No.

5 I do have something to say about something that
6 happened here at the MCC, and I also have a letter asking for
7 forgiveness that I would like to read to you, but I don't know
8 if you want me to do it now or later.

9 THE COURT: Mr. Casillas, if it's okay with you, there
10 will come a time when I will ask you whether there is anything
11 that you would like to say in connection with your sentencing.
12 That will be in a few minutes, after I hear from the government
13 and from your attorney. So at that time, you should feel free
14 to read whatever you would like to read to me and to discuss
15 with me what you were about to say about the occurrence in the
16 Metropolitan Correctional Center that you want me to be aware
17 of, and anything else you think is important for me to know in
18 connection with your sentencing. Okay?

19 THE DEFENDANT: Okay. Okay. I'm sorry. I'm sorry.
20 Sorry about that.

21 THE COURT: No, that's fine.

22 Mr. Casillas, you may recall that when you pled guilty
23 before me, I mentioned a set of rules known as the sentencing
24 guidelines. Well, the sentencing guidelines are a set of rules
25 published to assist judges like myself when we impose sentence.

k542CasS kjc

1 Although the guidelines used to be mandatory, meaning that I
2 would have been required to follow them in almost every
3 instance, they are no longer binding. However, I am still
4 required to consider the applicable guidelines as one factor
5 among others when determining an appropriate sentence. So in a
6 sense, the guidelines are just a starting point. So my first
7 task is to determine what the sentencing range is that applies
8 in your case.

9 The guidelines that apply to the illegal reentry
10 charge to which you pled guilty is Section 2L1.2(a) which
11 results in a base offense level for the charge of conviction of
12 8 because before you had -- before you had been ordered removed
13 from the United States for the first time, you had been
14 convicted of a felony for which you received a sentence of two
15 or more years' imprisonment, because of that, eight levels are
16 added to your base offense level, for an adjusted offense level
17 of 16.

18 Three levels are then subtracted from the adjusted
19 offense level for your acceptance of responsibility and that
20 results in an adjusted offense level of 13.

21 Because you have three criminal history points, the
22 resulting criminal history category is II.

23 Based upon an offense level of 13 and criminal history
24 category of II, the guideline range applicable is 15 to 21
25 months' imprisonment. And to the extent there was going to be

k542CasS kjc

1 supervised release, it would be between one and two years.

2 Do the parties agree that Mr. Casillas's guideline
3 range is 15 to 21 months' imprisonment?

4 The government?

5 MR. FERGENSON: Yes, your Honor.

6 THE COURT: The defense?

7 MS. LENOX: Yes, your Honor.

8 THE COURT: Now, I recognize that I do have the
9 ability to grant a departure here, however, as I mentioned, the
10 letter sent by the government is not binding on me, the
11 *Pimentel*, so called *Pimentel* letter. So therefore I
12 independently consider whether there is an appropriate basis
13 for a departure from the guideline range that applies in this
14 case. And while I recognize I do have the authority to depart,
15 and I also recognize counsel's argument with regard to a
16 departure on the basis of Mr. Casillas's criminal history, that
17 his criminal history is overstated because of the
18 double-counting issue, I don't believe under these
19 circumstances that a departure is warranted. However, I do
20 understand that I have the ability to consider those very same
21 facts, as well as others, in determining whether or not a
22 variance is appropriate in this case.

23 In fact, Ms. Lenox, you have indicated in your
24 submissions to me that a sentence of time served would be
25 appropriate based upon the argument about Mr. Casillas's

k542CasS kjc

1 criminal history as well as his circumstances while being
2 imprisoned at the MCC. The government recommends a sentence
3 within the guideline range, in other words between 15 and 21
4 months' imprisonment.

5 Does the government wish to be heard with regard to
6 sentencing?

7 MR. FERGENSON: No, your Honor. Unless the court has
8 any questions, we are happy to rest on our submission.

9 THE COURT: Okay. All right.

10 Let me just ask, Mr. Fergenson, do you have, other
11 than what's contained in your letter to me, your letter in
12 connection with sentencing, and then the *Pimentel* letter, do
13 you have any more information about Mr. Casillas's
14 Pennsylvania -- federal Pennsylvania conviction?

15 MR. FERGENSON: Unfortunately, your Honor, I do not.

16 THE COURT: Yeah, okay. All right. Thank you.

17 Ms. Lenox, do you wish to be heard with regard to
18 sentencing?

19 MS. LENOX: Your Honor, I, too, would rest on my
20 submission.

21 I do know that Mr. Casillas wishes to be heard, so I
22 want to make sure he has the time, and I'm sure your Honor is
23 aware of that as well, but I would rest on my submission.

24 THE COURT: Okay.

25 Now, Mr. Casillas, as I mentioned earlier, now is the

k542CasS kjc

1 time that I am asking you if you would like to be heard, and
2 you can make a statement, you can either read your statement
3 or make whatever statement you would believe is important to
4 make, that I should hear from you with regard to your
5 sentencing, and that can include what you were going to tell me
6 earlier on.

7 Go ahead.

8 THE DEFENDANT: Yes, on March 12, I was here and some
9 officers came, they came and they detonated about three small
10 bombs. They were looking for a gun apparently, and they shot
11 me with two of those small bombs. And I had to be on the
12 ground for two hours. I couldn't even breathe. So we had to
13 be on the ground for two hours and, as I said, I couldn't
14 breathe. It was something very shocking, something that I will
15 never forget in my life. So I want to know if you can consider
16 that when imposing sentence.

17 And we also have the thing with the virus, we have the
18 pandemic here, and actually my cellmate had the disease and he
19 was left here with me for two full weeks.

20 THE COURT: The answer is, Mr. Casillas, that both of
21 those issues can be considered by me in connection with your
22 sentencing, and that your attorney, Ms. Lenox, has referenced
23 both the conditions under which you have been held at the
24 Metropolitan Detention Center, including the search for the
25 gun, where you were injured by some, as I understand it, smoke

k542CasS kjc

1 pellets. So I can consider both of those issues as well as
2 anything else. I can consider those issues as well as any
3 other issues raised by your attorney in your sentencing
4 submission.

5 Is there anything else that you would like to tell me
6 related to your sentencing?

7 THE DEFENDANT: Yes.

8 THE COURT: Go ahead.

9 THE DEFENDANT: Your Honor, I know that I made a very
10 big mistake in coming back to the United States, coming back
11 without authorization, but I would like you to know that I did
12 it under desperate and --

13 THE INTERPRETER: Interpreter would like to correct
14 himself.

15 THE DEFENDANT: -- but I would like you to know that
16 I did it under circumstances of desperation and need, given
17 that I was doing very badly financially.

18 Now I do understand how serious the mistake that I
19 made is. The situation is worse here. Now my mother is sick.
20 I am far away from my children. Now I would just like to be
21 able to return and to regain the time that I lost with them.

22 I suffer from diabetes, and I am also very remorseful
23 for what has happened here. I promise you that I will not ever
24 again return to the United States. I just ask that you give me
25 the opportunity to return home.

k542CasS kjc

1 Finally, I would like to apologize to the United
2 States and to you, your Honor.

3 Thank you very much.

4 THE COURT: Okay. Thank you, Mr. Casillas.

5 Is there any reason why sentence should not be imposed
6 at this time?

7 From the government?

8 MR. FERGENSON: No, your Honor.

9 THE COURT: From the defense?

10 MS. LENOX: No, your Honor.

11 THE COURT: Mr. Fergenson, let me just ask, confirm,
12 is there a detainer currently lodged as to Mr. Casillas?

13 MR. FERGENSON: Your Honor, an immigration detainer?
14 I'm not certain. I expect there would be.

15 THE COURT: Ms. Lenox, do you know?

16 MS. LENOX: I, too, do not know for certain, but I
17 also would expect that there is.

18 THE COURT: Okay. So just to be clear, my comments in
19 sentencing here today are premised on the understanding that
20 there is a detainer, that Mr. Casillas -- I understand his
21 agreement and desire to go back to the Dominican Republic, but
22 that the immigration authorities will take Mr. Casillas into
23 custody for whatever period of time, hopefully it will be a
24 brief period of time, so that he can be deported from the
25 United States. And that is a material part of the basis for my

k542CasS kjc

1 considerations here today.

2 First, as I have stated and the parties agree,
3 Mr. Casillas's guideline range is 15 to 20 months'
4 imprisonment.

5 Under the Supreme Court's decision in *Booker* and its
6 progeny, the guideline range is only one factor that I must
7 consider in deciding an appropriate sentence. I am also
8 required to consider the other factors set forth in 18 United
9 States Code § 3553(a), and I have done so. The factors
10 include, but are not limited to, the nature and circumstances
11 of the offense and the personal history and characteristics of
12 Mr. Casillas, since each defendant must be considered
13 individually.

14 I am also required to consider the need for the
15 sentence imposed to reflect the seriousness of the offense,
16 promote respect for the law, provide just punishment for the
17 offense, afford adequate defense to criminal conduct, and avoid
18 unwarranted sentencing disparities, among other things.

19 First, I will address the circumstances of the
20 offense. There is no question, Mr. Casillas, which I believe
21 you have indicated here today, that you recognize the
22 seriousness of your offense of coming back to this country
23 without having gotten approval from the government of the
24 United States and that you came back after being removed and
25 deported from this country after you committed an offense for

k542CasS kjc

1 which you received a sentence of more than two years. The
2 immigration laws in this country are meant to both at times
3 prohibit people from coming into this country, but also meant
4 to regularize people's ability to enter the country legally and
5 to remain in the country legally. So it's critical that those
6 who wish to enter the country abide by the laws that are in
7 place because of that. So I do find that the offense to which
8 you have been convicted is a serious offense.

9 Now, in connection with your personal history and
10 characteristics, in that regard, I read your submission to me
11 as well as the attachments, so I will take the comments of your
12 sister and your brothers with regard to your initially coming
13 into this country was to help your family, particularly after
14 your father passed away in the Dominican Republic, and that
15 they vouched for your character. So I will take their views
16 into consideration.

17 However, I do note, and I don't know necessarily why
18 this is true, but that you, having helped them, apparently,
19 with money that enabled one or all of them to finish and
20 continue their education, they had not in the past apparently
21 reciprocated in helping you with your family, thus, my
22 understanding is, resulting in your returning to this country.
23 Based upon their letters, my understanding is that they have
24 pledged to support you and help you going forward, and I will
25 consider that fact, in other words, their support for you in

k542CasS kjc

1 connection with your sentencing also.

2 In addition, I would like to emphasize that this
3 sentence is unique and unique for several reasons.

4 Number one, as has been pointed out and as the parties
5 recognize, we are in the midst of a global health crisis that
6 has hit particularly hard in the New York area, and also there
7 are a certain number of cases that are actually in the prison.
8 There doesn't appear to be a dispute that Mr. Casillas suffers
9 from diabetes and that that diabetes, my understanding is,
10 based upon the CDC's information concerning individuals who are
11 at increased risk to serious illness and death, one of those
12 categories of individuals are people who have diabetes. So I
13 will take that into consideration also.

14 Did we just lose anybody? Is the government still on?

15 MR. FERGENSON: I am here, your Honor.

16 THE COURT: Is the defense still on?

17 MS. LENOX: Yes, your Honor.

18 THE COURT: Mr. Casillas, are you still on?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. I will continue with the
21 sentencing.

22 So I will consider the global health crisis also as
23 one of the unique issues presented in this sentencing.

24 In addition, through no fault of anyone other than the
25 individual who decided -- individuals who were involved in

k542CasS kjc

1 bringing contraband into the Metropolitan Detention Center,
2 because of that and because of the search for that contraband,
3 specifically for the firearm, which was eventually found, it
4 resulted in conditions -- a lockdown condition even prior to
5 the global health crisis.

6 Also, in connection with that, I take it as something
7 that's not disputed and I noted in the medical records that
8 Mr. Casillas did get treated for being hit with some smoke
9 pellets during the search for that firearm.

10 In addition, I do recognize that, because of the
11 global health crisis, there is a need to have a lockdown in the
12 facility to, in essence, enforce a form of social distancing
13 that otherwise would not be possible within the facility, and
14 that although these measures are done to stem the tide of the
15 spread of the COVID-19 virus, the COVID-19 within the prison
16 system, the result is that prisoners have limited access
17 outside of their cells, limited access to communicating with
18 their attorneys, and there is no visitation or anything else
19 going on in the facilities, and limited movements within the
20 facility. Now, here again, this is a unique circumstance of
21 this sentencing.

22 Also, and really as I indicated earlier, a primary
23 consideration for me is the fact that Mr. Casillas, although
24 his sentence is 15 to 21 months, Mr. Casillas, as I understand
25 it, will be taken into immigration custody once he is released

k542CasS kjc

1 from the custody of the Bureau of Prisons for removal and
2 deportation proceeding. Therefore, my understanding is that
3 Mr. Casillas will remain in federal custody, albeit when he is
4 released from BOP custody in the custody of the immigration
5 authorities, and that Mr. Casillas faces deportation, certain
6 deportation based upon the charges to which he has pled guilty.
7 So I am considering all of those things in connection with the
8 sentencing.

9 If I could ask Mr. Fergenson, if you could determine
10 or confirm that there is in fact a detainer and if there is
11 not, just I would really like to be informed of that. If there
12 is, there is no need to take it any further, but it is my
13 understanding, and perhaps -- is Ms. Williams still on the
14 line?

15 THE DEPUTY CLERK: I am. Can you hear me?

16 THE COURT: Yes, I can.

17 Mr. Fergenson, you know, you don't have to do that.
18 In connection with my -- any sentencing, I can communicate with
19 the Marshal Service to determine whether there is a detainer in
20 place.

21 Now, I am prepared to render a sentencing:

22 So, Mr. Casillas, I am going to grant your attorney's
23 request that you be sentenced to time served now.

24 In doing so, as I mentioned, I am doing that for the
25 reasons I have just mentioned, including the fact that you face

k542CasS kjc

1 additional time in custody, as well as the global health
2 crisis, your specific health issue of diabetes, which places
3 you at increased risk, as well as the conditions of
4 confinement. I should say that the conditions of confinement
5 in and of itself would not warrant a variance in my view, and
6 therefore without the public health crisis and without the fact
7 that you are going to spend additional time in custody and you
8 have agreed to and you have indicated a desire to return to
9 your country, I would not have otherwise granted a variance in
10 this case.

11 I will not impose a fine because I find that you are
12 not -- you don't have the wherewithal to pay a fine.

13 You do have to pay a \$100 special assessment.

14 In addition, as I mentioned, because you are going to
15 be deported, I will not impose a period of supervised release.

16 I believe that this sentence is sufficient but not
17 greater than necessary to comply with the purposes of
18 sentencing set forth in 18 United States Code § 3553(a).

19 Does either counsel know of any legal reason why this
20 sentence should not be imposed as stated?

21 From the government?

22 MR. FERGENSON: No, your Honor.

23 THE COURT: All right.

24 Ms. Lenox?

25 MS. LENOX: No, your Honor.

k542CasS kjc

1 THE COURT: All right. So that is the sentence that I
2 am imposing now.

3 Mr. Casillas, you do have the right to appeal your
4 conviction and sentence consistent with -- again, there
5 actually wasn't a plea agreement here, but you have the right
6 to appeal your conviction and sentence. The notice of appeal
7 must be filed within 14 days of the judgment of conviction. If
8 you are not able to pay the cost of an appeal, you may apply
9 for leave to appeal *in forma pauperis*. If you request, the
10 Clerk of the Court will prepare and file a notice of appeal on
11 your own -- on your behalf.

12 Now, Mr. Casillas, I take you at your word that you
13 understand the seriousness of your offense and that you will,
14 once removed from this country to the Dominican Republic, that
15 you will not come back to this country unless you do so
16 legally. And I hope that you lead, going forward, a
17 law-abiding life and that I don't have occasion to see you
18 again in my courtroom in connection with any proceeding.

19 So to the extent there are any underlying counts or
20 indictments, I will dismiss those at this time.

21 Let me ask is there anything else that we need to deal
22 with -- oh, I should mention we will -- I'm sorry. Go ahead.

23 THE INTERPRETER: There was an answer by the defendant
24 regarding your comments, your Honor, and the answer was the
25 following: "I promise that to you, your Honor. I promise it."

k542CasS kjc

1 THE COURT: Okay. Thank you, Mr. Garcia.

2 We will prepare the standard order for the Marshal
3 Service indicating that Mr. Casillas has received a sentence of
4 time served and that he therefore can be released from BOP
5 custody, subject to any detainers that have been lodged against
6 him.

7 Let me ask, is there anything else that we need to
8 deal with today?

9 From the government?

10 MR. FERGENSON: No, your Honor.

11 THE COURT: From the defense?

12 MS. LENOX: No, your Honor.

13 THE COURT: Okay. Thank you everyone for getting on
14 the phone and everyone should have a good day, be safe, and
15 stay well. Thank you. We will stand adjourned.

16 MR. FERGENSON: Thank you, your Honor.

17 MS. LENOX: Thank you.

18 oOo